Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO M-01–401 OF 2009

ABU SAMAH, MOHD HISHAMUDIN AND AZIAH ALI JJCA

26 DECEMBER 2012

Civil Procedure — Judicial review — Certiorari — Relief for declaration that land acquisition by state authority declared null and void — Flash floods and landslides — Declaration by state authority to acquire part of land to stabilise slopes on land to avoid further landslides — Public inquiry to determine claims for compensation of acquisition of land — Whether acquisition legal impropriety — Whether land acquisition contrary to art 13(1) of the Federal Constitution — Whether land acquisition null and void — Land Acquisition Act 1960

The appellants were registered proprietors of a piece of the land in dispute ('the land'). Pursuant to a land acquisition in 1999, the State Authority of Malacca acquired 8.0937 hectares of the land. The remaining part of the land was given a new title ('Lot 1522') and the title was issued to the appellants. The land was acquired for the purpose of a low-cost housing project ('Projek Rumah Awam Kos Rendah (PAKR) Taman Rembia Setia, Mukim Rembia'). However, certain parts of Malacca were hit by flash floods, including Taman Rembia Setia. The flash floods caused landslides at various parts of the slope on Lot 1522. Fearing for the lives of the residents of Taman Rembia Setia, on 8 December 2006, the state authority published in the *gazette* a declaration in Form D pursuant to s 8 of the Land Acquisition Act 1960 ('the Act'), its decision to acquire 0.4320 hectares of the appellants' land on Lot 1522. The acquisition was for the purpose of stabilising the slopes on the said land to avoid any further landslides in the area. This was followed by the issuance of Form E under s 10 of the Act in order to hold a public inquiry to determine the claims for compensation of the acquisition of the land. The appellants opposed the land acquisition on the ground of legal impropriety as it was alleged that the state authority had failed to publish Form A in the *gazette* pursuant to s 4(1) of the Act. It was contended that the failure to publish cause the land acquisition exercise to be carried out not in accordance with the law. It was further submitted that the land acquisition was contrary to art 13(1) of the Federal Constitution ('Constitution') and therefore, should be declared null and void. In their application for judicial review in the High Court, the appellants sought the reliefs for a certiorari order to quash the decision of the state authority in acquiring a part of the land held under Lot 1522; and a declaration that the

land acquisition be declared null and void. The High Court dismissed the application with costs. Hence, the present appeal.

Held, allowing appeal with costs:

(1) The issuance of Form A under s 4(1) of the Act is mandatory and the failure of the state authority to comply with this mandatory provision could only mean that the land acquisition was not in accordance with the law. It was clear that art 13(1) of the Constitution had been violated as the appellants' land was acquired by the state authority without due compliance with the Act. The Act is meant to safeguard the constitutional right to property under art 13 of the Constitution, as it prescribes the procedure to be followed by the state authority for the acquiring of a person's land, including the determination of the amount of fair and reasonable compensation to be paid (see para 20).

(2) The Land Acquisition Act 1960 is a legislation that empowers a state authority to deprive a person of his property. As such, the provisions of the Act must be strictly interpreted in favour of the person who is to be deprived of his property so as to give meaning to the constitutional protection of a person's right to his property (see para 21).

(3) The court was unable to agree with the majority decision in *Ng Kim Moi*. The reasoning of the majority judgment was highly technical and speculative in nature. It did not give due emphasis to the purpose of the Act and was contrary to the spirit of art 13 of the Constitution (see para 25).

[Bahasa Malaysia summary

Perayu-perayu adalah pemilik berdaftar sebidang tanah yang dipertikaikan ('tanah tersebut'). Berikutan pengambilan tanah pada 1999, Pihak Berkuasa Negeri Melaka mengambil alih 8.0937 hektar tanah tersebut. Bahagian selebihnya tanah tersebut diberi hak milik baru ('Lot 1522') dan hak milik tersebut dikeluarkan kepada perayu-perayu. Tanah tersebut diambil alih bagi tujuan projek rumah kos murah ('Projek Rumah Awam Kos Rendah (PAKR) Taman Rembia Setia, Mukim Rembia'). Walau bagaimanapun, daerah tertentu Melaka dilanda banjir kilat, termasuk Taman Rembia Setia. Banjir kilat tersebut menyebabkan tanah runtuh di beberapa bahagian cerun di Lot 1522. Bimbang akan nyawa penduduk-penduduk Taman Rembia Setia, pada 8 Disember 2006, pihak berkuasa negeri menerbitkan di dalam *warta* perisytiharan dalam Borang D berikutan s 8 Akta Pengambilan Tanah 1960 ('Akta'), keputusannya untuk mengambil alih 0.4320 hektar tanah perayu-perayu atas Lot 1522. Pengambilan tersebut adalah bertjuan untuk menstabilkan cerun-cerun atas tanah tersebut untuk menghindar apa-apa tanah runtuh selanjutnya di kawasan tersebut. Ini diikuti dengan pengeluaran Borang E di bawah s 10 Akta supaya dapat mengadakan siasatan awam untuk

menentukan tuntutan-tuntutan untuk pampasan pengambilan tanah tersebut. Perayu-perayu membantah pengambilan tanah tersebut atas alasan *legal impropriety* memandangkan ia didakwa bahawa Pihak Berkuasa Negeri telah gagal untuk menerbitkan Borang A di dalam *warta* berikutan s 4(1) Akta. Ia dihujahkan bahawa kegagalan untuk menerbitkan menyebabkan pelaksanaan pengambilan tanah dijalankan tidak mengikut undang-undang. Ia selanjutnya dihujahkan bahawa pengambilan tanah tersebut adalah bertentangan perkara 13(1) Perlembagaan Persekutuan ('Perlembagaan') dan oleh itu, patut diisytiharkan batal dan tidak sah. Dalam permohonan mereka untuk semakan kehakiman di Mahkamah Tinggi, perayu-perayu memohon relief untuk perintah certiorari untuk membatalkan keputusan pihak berkuasa negeri dalam mengambil alih sebahagian tanah yang dipegang di bawah Lot 1522; dan perisytiharan bahawa pengambilan tanah diisytiharkan batal dan tidak sah. Mahkamah Tinggi menolak permohonan dengan kos. Maka, rayuan ini.

Diputuskan, membenarkan rayuan dengan kos:

(1) Pengeluaran Borang A di bawah s 4(1) Akta adalah mandatori dan kegagalan pihak berkuasa negeri untuk memenuhi peruntukan mandatori ini hanya bermaksud bahawa pengambilan tanah tidak mengikut undang-undang. Adalah jelas bahawa perkara 13(1) Perlembagaan telah dicabuli memandangkan tanah perayu-perayu diambil alih oleh Pihak Berkuasa Negeri tanpa pematuhan wajar Akta. Akta bermaksud untuk melindungi hak perlembagaan kepada tanah di bawah perkara 13 Perlembagaan, kerana ia menyatakan prosedur untuk diikuti oleh pihak berkuasa negeri untuk mengambil alih tanah seseorang, termasuk penentuan jumlah pampasan yang adil dan munasabah untuk dibayar (lihat perenggan 20).

(2) Akta Pengambilan Tanah 1960 adalah perundangan yang memberi kuasa kepada pihak berkuasa negeri untuk menafikan seseorang tanahnya. Oleh itu, peruntukan Akta mesti ditafsirkan secara ketat memihak kepada seseorang yang akan dinafikan tanahnya untuk memberi maksud kepada perlindungan perlembagaan hak seseorang kepada tanahnya (lihat perenggan 21).

(3) Mahkamah tidak dapat bersetuju dengan keputusan majoriti di dalam kes *Ng Kim Moi*. Alasan penghakiman majoriti tersebut adalah sangat teknikal dan bersifat spekulatif. Ia tidak memberi penekanan kepada tujuan Akta dan adalah bertentangan kepada semangat perkara 13 Perlembagaan (lihat perenggan 25).]

Notes

For cases on certiorari, see 2(3) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 5116–5117.

Cases referred to

Ismail bin Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman [2011] 5 MLJ 197; [2010] 9 CLJ 810, CA (refd)

Ng Kim Moi (P) & Ors v Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus (Negeri Sembilan Township Sdn Bhd & Anor, proposed intervenors) [2004] 3 MLJ 301, CA (refd)

Legislation referred to

Federal Constitution art 13(1)

Land Acquisition Act 1960 ss 4, 4(1), 5, 8, 10, Second Shedule, Forms A, B, D, E, F

Appeal from: Civil Suit No 13–1 of 2007 (High Court, Melaka)

Thakurdas (Guna Seelan & Associates) for the appellants.

Meor Hashimi bin Abdul Hamid (Office of the State Legal Adviser, Malacca) for the respondents.

Mohd Hishamudin JCA (delivering judgment of the court):

[1] The appeal before us emanates from the High Court of Malacca, namely, High Court of Malacca Civil Suit No 13–1 of 2007.

[2] The appeal is against the decision of the learned High Court judge in dismissing the appellants' application for judicial review.

[3] On 5 January 2012 we allowed the appellants appeal with costs and set aside the decision of the High Court. Our decision was unanimous.

[4] We now give our grounds for allowing the appeal.

[5] We begin by briefly setting out the facts of the case.

[6] The appellants were registered proprietors of a piece of land known as Lot 80, Mukim Rembia, District of Alor Gajah, State of Malacca with an area of approximately 20 hectares ('the land').

[7] Pursuant to a land acquisition exercise in 1999, the State Authority of Malacca acquired 8.0937 hectares of the land. The remaining part of the land was given a new title, namely Lot 1522, Grant No 35536, Mukim Rembia, District of Alor Gajah, State of Malacca, and the title was issued to the appellants. The land was acquired for the purpose of a low-cost housing project known as 'Projek Rumah Awam Kos Rendah (PAKR) Taman Rembia Setia, Mukim Rembia'.

[8] However, sometime towards the end of 2006, certain parts of Malacca were hit by phenomenal flash floods, including Taman Rembia Setia. The flash floods caused land slides at various parts of the slope on Lot 1522. The State Authority of Malacca felt that this could endanger the lives of the residents of Taman Rembia Setia.

[9] As a result, on 8 December 2006 the state authority published in the gazette a declaration in Form D pursuant to s 8 of the Land Acquisition Act 1960 ('the Act') its decision to acquire 0.4320 hectares of the appellants' land on Lot 1522. The acquisition was for the purpose of stabilising the slopes on the said land to avoid any further land slides in the area.

[10] This was followed by the issuance of Form E pursuant to s 10 of the Act for the purpose of holding a public inquiry to determine the claims for compensation in respect of the acquisition of the land.

[11] The appellants objected to the land acquisition exercise on the ground of legal impropriety, namely, that the state authority had failed to publish in the gazette a prescribed form called Form A pursuant to s 4(1) of the Act.

[12] Section 4 of the Act states:

> 4 Preliminary notice
>
> (1) Whenever the State Authority is satisfied that any land in any locality in the State is likely to be needed for any purposes referred to in section 3 a notification in Form A shall be published in the Gazette.
>
> (2) The Land Administrator shall give public notice of any notification published under subsection (1) in the manner prescribed by section 52.
>
> (3) A notification under subsection (1) shall lapse in so far as it relates to any land or part of any land in respect of which there is not published in the Gazette within twelve months from the date of publication of such notification a declaration under section 8(1).
>
> (4) Notwithstanding subsection (3), it shall be lawful for the State Authority to publish a fresh notification under section 4(1) in respect of the land or part of the land in relation to which the notification had lapsed if the State Authority is satisfied that such land or such part of the land is likely to be needed for any purposes referred to in section 3.

[13] The Form A, as referred to in s 4(1) of the Act, is set out in the Second Schedule to the Act; and it is as follows:

A

Form A

Land Acquisition Act 1960

(Section 4)

B

NOTICE THAT LAND IS LIKELY TO BE ACQUIRED

It is hereby notified that lands in the locality as described in the Schedule hereto, including those lands, if any, specified by lot number or by the lot numbers in the neighbouring lands, are likely to be needed for the following

C purpose:

……

……

It is further notified that any person authorized by the State Director in that

D behalf may enter upon any land in such locality in order to examine it and undertake survey operations. If any damage is done in the course of such works compensation therefor will be paid. Any dispute as to the amount of such compensation will be referred to the Land Administrator at…….

E

Dated this…… day of……., 20

…….

……

F *State Director*

SCHEDULE

District

G ……

Mukim/Township

……

Description of the locality

H ……

I

[14] The appellants contended that as a result of the failure of the state authority to publish in the *gazette* Form A, the land acquisition exercise was not carried out in accordance with the law. They submitted that the land acquisition by the state authority was contrary to art 13(1) of the Federal Constitution and should be declared null and void.

[15] Now, art 13(1) of the Federal Constitution provides:

13 Rights to property.

(1) No person shall be deprived of property save in accordance with law.

[16] In their application for judicial review in the High Court, the appellants prayed for the following reliefs:

(a) for an order of certiorari to quash the decision of the state authority in acquiring a part of the land held under Lot 1522; and

(b) a declaration that the land acquisition by the state authority be declared null and void.

[17] The High Court dismissed the judicial review application with costs. It is against this decision that the appellants now appeal to this court.

[18] After having considered the submissions of both parties, we are in full agreement with the appellants that the land acquisition was not in accordance with the Land Acquisition Act 1960 and is therefore contrary to art 13(1) of the Federal Constitution.

[19] In this regard, we are in agreement with the view expressed by Gopal Sri Ram JCA (as he then was) in his dissenting judgment in *Ng Kim Moi (P) & Ors v Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus (Negeri Sembilan Township Sdn Bhd & Anor, proposed intervenors)* [2004] 3 MLJ 301 where His Lordship said (at p 328):

> [74] The draft judgment of my learned brother accepts in entirety the appellants' contention that Form A was never issued and that Form E was never served. However, my learned brother has gone on to hold that issuance of Form A is not mandatory despite the imperative language of s 4(1). With respect, this approach disregards well settled principles of statutory construction. We are here dealing with a statute which is aimed at the prevention of arbitrary escheatment of proprietary rights, the protection of which the supreme law of the Federation guarantees as a fundamental right. To read mandatory provisions in such a statute in a generous and favourable manner towards those whose duty is to ensure their due observance is to condone and promote maladministration in a manner so important as the deprivation of property. It is a message from the judicial arm of the government to bureaucrats that due compliance with mandatory provisions of the Act will produce no consequences for them. I am therefore unable in the face of compelling authority as I have found and cited in this judgment to accept an ipse dixit based on no authority that compliance with s 4(1) is not mandatory.

[20] In our judgment, based on the above judicial authority, the issuance of Form A under s 4(1) of the Act is mandatory and the failure of the state authority to comply with this mandatory provision can only mean that the land

A acquisition exercise is not in accordance with the law. Following from that, it is clear that the provision of art 13(1) of the Federal Constitution had been violated as the appellants' land was acquired by the state authority without due compliance with the Land Acquisition Act 1960. The Act is meant to safeguard the constitutional right to property under art 13(1) of the Federal B Constitution, as it prescribes the procedure to be followed by the state authority for the acquiring of a person's land, including the determination of the amount of fair and reasonable compensation to be paid.

C **[21]** The Land Acquisition Act is a legislation that empowers a state authority to deprive a person of his property. As such, we are of the view that the provisions of the Act must be strictly interpreted in favour of the person who is to be deprived of his property so as to give meaning to the constitutional protection of a person's right to his property (see *Ismail bin Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman* [2011] 5 MLJ 197; [2010] 9 D CLJ 810).

[22] The argument advanced by the learned state legal advisor for the respondents is that the provision of s 4(1) is merely directory and not mandatory, and as such the failure of the state authority to issue Form A would E not make the land acquisition unlawful and unconstitutional.

[23] In support of his submission, the learned state legal advisor relies on the majority decision in *Ng Kim Moi*. In *Ng Kim Moi*, the appellants' land was F compulsorily acquired by the State Authority of Negeri Sembilan. The appellants alleged that Forms A and B as prescribed under ss 4–5 of the Land Acquisition Act 1960 were never issued by the state authority, while Forms D–F, though issued, were never served on the appellants. The appellants argued that for that reason alone the land acquisition by the state authority should be G declared unlawful as the mandatory provisions of the Act were not complied with; and, further, that as a result of the non-compliance, the land acquisition was unconstitutional for violation of art 13(1) of the Federal Constitution.

[24] The majority decision in *Ng Kim Moi* took the view that the wordings H in s 4(1) of the Act does not make the notification under that provision of the Act mandatory, but merely directory. Abdul Aziz Mohamad JCA (as he then was), in delivering the majority judgment, gave the following reasons (at pp 331–333):

I [90] Two consequences seem to flow from the publication of the preliminary notification in Form A. One consequence is that persons may be authorised by the state director under s 5, using Form B, to enter any land affected by the notification to do certain work on it. The first sentence of the second paragraph of Form A gives notice of it. It says 'It is further notified that any person authorized by the State Director in that behalf

may enter upon any land in such locality in order to examine it and undertake survey operations'. The word is 'survey operations'. What it comprises is listed in Form B. From the list it is apparent that the aim of the work is to ascertain whether the lands are suitable for the purpose for which they are proposed to be acquired and to specifically identify the lands. The result of the work will, I presume, be taken into consideration in deciding whether to acquire the lands in the locality and which lands are to be acquired. This consequence of the publication of the notification in Form A can only be for the benefit of the acquiring authority. If the notification is not published the acquiring authority will be deprived of the power to have survey operations carried out on the land. But they may not need to carry out such survey operations. They may be able to decide exactly which lands are needed and that they are suitable without needing to carry out such survey operations.

[91] The other consequence of the publication of the notification in Form A concerns the market value of the land, that is the value on the basis of which compensation is to be paid. That is a consequence which affects the interests of the landowner. According to para 1(1)(a) of the First Schedule to the Act, the market value is the market value at the date of publication in the Gazette of the notification in Form A. But that is to be so only within 12 months a declaration under s 8 follows. If there is no declaration under s 8 within 12 months, according to s 4(3) the Form A notification shall lapse. What happens then? The Act does not say that you must start all over again by gazetting a fresh notification in Form A, although there is power to do so under s 4(4). The answer is to be found in para 1(1)(b) of the First Schedule. It says that 'in other cases' the market value is the market value at the date of the publication in the Gazette of the declaration under s 8.

[92] What situations are intended by the words 'in other cases'? The obvious situation is, of course, one where the Form A notification is followed by a Form D declaration after 12 months, that is, after the Form A notification has lapsed. In that situation land is validly acquired, and compensation is paid on the basis of the market value at the date of the gazetting of the declaration in Form D, as if there had been no Form A notification in the first place, it having lapsed. In that situation, as far as the market value is concerned, the Form A notification will have been in vain. It has been a wasteful exercise that could have been done without. If land can be validly acquired in a situation in which the Form A notification is as good as if it had not been made, the Form A notification cannot be mandatory. I will even go one step further any say that for the same reason another situation intended by the words 'in other cases' in para 1(1)(b) of the First Schedule is the situation where no notification in Form A was ever gazetted, and that therefore the Act itself, by implication, does not intend that a Form A notification be mandatory.

[93] There is another angle from which the question may be approached — the angle of the wording of s 4(1) itself. The requirement that 'a notification in Form A shall be published in the Gazette' is dependent on the state

authority being 'satisfied that any land in any locality in the State is likely to be needed'. Until there is such satisfaction on the part of the state authority, the notification is not required. 'State Authority' is defined in s 2(1) to mean 'the Ruler or the Yang Di-Pertua Negeri of the State'. Constitutionally the Ruler, by which I include a reference to the Yang Di-Pertua Negeri as well, acts on the advice of the State Executive Council in matters such as those under the Act, even in arriving at a satisfaction under s 4(1). In practice the decision to be satisfied will be made by the State Executive Council. Papers will have to be prepared for the consideration of the State Executive Council. But the satisfaction of the State Executive will be that of the Ruler only when he acts to indicate his endorsement of or assent to the decision of the State Executive Council.

[94] But the reality of the government administration is such that matters might not even reach the stage of the Ruler's satisfaction. The question of acquiring lands in a particular locality may have been studied by officials of the relevant departments with the involvement even of the *Menteri Besar* (or Chief Minister), without anyone being conscious that he is satisfied that the lands are likely to be needed. Even if those persons are aware of s 4, the circumstances may be such that it is difficult for them to say that at the administrative level a satisfaction has been reached that the lands are likely to be needed. The question of acquiring the lands might be a controversial one and opinions may differ at that level. Even an independent observer might find it difficult to say that at a particular moment the body of officials or the *Menteri Besar* are satisfied that the lands are likely to be needed and that they should submit the question to the State Executive Council for its satisfaction and from there to the Ruler for the Ruler's satisfaction. So no steps are taken to obtain the Ruler's satisfaction, and unless and until the Ruler is satisfied the lands are likely to be needed, there is no obligation to publish the Form A notification. Then one fine day everyone agrees, without having to have survey operations undertaken, that the lands are needed. Papers are then prepared, not to obtain the State Executive Council's and the Ruler's satisfaction that the lands are likely to be needed, but to obtain their decision under s 8(1) that the lands are needed. It would be illogical then to also obtain the Ruler's satisfaction under s 4(1). It would also be pointless to do so because it would result in the gazetting of Form A and Form D on the same day, which would not make any difference in the matter of the consequences of the gazetting of Form A that I have mentioned. As far as the government is concerned, they would not, or no longer, require to have survey operations undertaken because they have already decided to acquire the lands. As far as the landowners are concerned, the market value will be the market value on the date when both Forms A and D are gazetted.Council for its satisfaction and from there to the Ruler for the Ruler's satisfaction. So no steps are taken to obtain the Ruler's satisfaction, and unless and until the Ruler is satisfied the lands are likely to be needed, there is no obligation to publish the Form A notification. Then one fine day everyone agrees, without having to have survey operations undertaken, that the lands are needed. Papers are then

prepared, not to obtain the State Executive Council's and the Ruler's satisfaction that the lands are likely to be needed, but to obtain their decision under s 8(1) that the lands are needed. It would be illogical then to also obtain the Ruler's satisfaction under s 4(1). It would also be pointless to do so because it would result in the gazetting of Form A and Form D on the same day, which would not make any difference in the matter of the consequences of the gazetting of Form A that I have mentioned. As far as the government is concerned, they would not, or no longer, require to have survey operations undertaken because they have already decided to acquire the lands. As far as the landowners are concerned, the market value will be the market value on the date when both Forms A and D are gazetted.

[95] For the reasons that I have given, I am of the view that the publication of a notification in Form A under s 4(1) is not mandatory and that the failure to publish the notification in this case does not render the acquisition proceedings null and void.

[25] With respect, we are unable to agree with the majority decision in *Ng Kim Moi*. In our judgment, the lengthy reasoning of the majority judgment is highly technical and speculative in nature. It does not give due emphasis to the purpose of the Land Acquisition Act and is contrary to the spirit of art 13(1) of the Federal Constitution. In this regard, we once again refer to the dissenting judgment of Gopal Sri Ram JCA in *Ng Kim Moi*, where His Lordship stated (at p 315):

[15] Bearing in mind what has been said in the cases referred to above, I turn now to consider whether the word 'shall' in s 4(1) of the Act is mandatory or merely directory. In doing so, I take into account the fact that regard must be had to s 4(1) not in isolation but in the context of the Act when read as a whole. And it is this approach that I adopt.

[16] It must be accepted as settled beyond argument that the object or the purpose of the Act is in essence to empower the state to deprive an owner of his immovable property in exchange for fair and reasonable compensation. There is no right vested in an owner to a pre-acquisition hearing; see *S Kulasingham & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204. However there is a right to be heard at an inquiry held by the land administrator with regard to the quantum of the compensation that is to be awarded. Since it is a statute that is aimed at deprivation of property, courts require the acquiring authority to act strictly in accordance with the terms of the Act. See *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35.

[17] Thus, when s 4(1) is read in the context of the Act as a whole, it is clear that the word 'shall' that appears in that subsection is mandatory and not merely directory in effect. Put in another fashion, the word 'shall' prima facie denotes a mandatory provision and there is nothing in the context of the Act that points to a contrary meaning.

[18] No Malaysian case was cited to us either in support or in opposition of the view that I take. However, there is a decision of the Indian Supreme Court on s 4(1) of the Indian Land Acquisition Act 1984. The provision reads as follows:

> Whenever it appears to the appropriate Government or Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

[19] As may be seen the Indian provision is similar to our s 4(1). And it may be added for good measure that our courts have repeatedly relied on Indian cases when deciding land acquisition disputes. See *Superintendant of Land and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243. For a more recent illustration, assistance may be had from the well-reasoned judgment of Abdul Malik Ishak J in *Guan Seng Co Ltd, Taiping v Pentadbir Tanah Daerah Larut dan Matang, Taiping* [1994] 1 MLJ 4.

[20] In *Collector of Allahabad v Raja Ram Jaiswal* AIR 1985 SC 1622, Desai J said of the Indian s 4(1):

> A bare perusal of s 4(1) clearly shows that in order to comply with the statutory requirements therein set out, notification stating therein 'the land which is needed or is likely to be needed for a public-purpose' has to be published in the official Gazette. The second part of the sub-section provides that the Collector has to cause public notice of the substance of such notification to be given at convenient places in the locality in which the land proposed to be acquired is situated. Both the conditions are held by a catena of decisions to be mandatory. Whether the second proposition is mandatory or directory is no more res integra. In *Khub Chand v State of Rajasthan* [1967] 1 SCR 120 at p 125: (AIR 1967 SC 1074 at p 1077), Subba Rao CJ speaking for the court observed that:
>
> > the statutory interpretation is, therefore, clear, namely, that the giving of public notice is mandatory. If so; the notification issued under s 4 without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void.

[21] As earlier observed, Form A was admittedly not issued. This omission amounts to a clear violation of the mandatory provisions of s 4(1) of the Act.

[26] For the above reasons, we hold that the state authority had failed to acquire the appellants' land in accordance with the law; and hence the land acquisition was in violation of art 13(1) of the Federal Constitution.

Accordingly, we allowed the appeal with costs and granted the order and declaration prayed for. The order of the High Court is set aside.

[27] Appeal allowed with costs of RM15,000 for here and below.

Appeal allowed with costs.

Reported by Afiq Mohamad Noor